



366658



"Winters, Karen"
 <KWinters@ssd.com>
 06/14/2006 08:21 PM

To: Alan.Tenenbaum@usdoj.gov, Elise.Feldman@usdoj.gov,
 vpowers@szd.com, Catherine
 Garypie/R5/USEPA/US@EPA, ssamuels@szd.com,
 cc: Maria Cintron-Silva/DC/USEPA/US@EPA,
 LPutman@milbank.com, TKreller@milbank.com,
 wvawest@ameritech.net, CGIBBONS@szd.com, "Lerner,
 bcc

Subject RE: CTA and Settlement Agreement Issues - From Steve
 Samuels

All of the Settlement Agreements that we've circulated recently include
 a reference to Exhibit B as well as the language Steve suggests below.

-----Original Message-----

From: Alan.Tenenbaum@usdoj.gov [mailto:Alan.Tenenbaum@usdoj.gov]
 Sent: Wednesday, June 14, 2006 4:48 PM
 To: Elise.Feldman@usdoj.gov; vpowers@szd.com;
 garypie.catherine@epamail.epa.gov; ssamuels@szd.com;
 ebessey@kdhe.state.ks.us; monroeb@michigan.gov; PierceJC@michigan.gov;
 Betsey.Streuli@deq.state.ok.us; Brooks, Patrick J.;
 JMorgan@atg.state.il.us; Winters, Karen
 Cc: Cintron-Silva.Maria@epamail.epa.gov; LPutman@milbank.com;
 TKreller@milbank.com; wvawest@ameritech.net; CGIBBONS@szd.com; Lerner,
 Stephen D.
 Subject: RE: CTA and Settlement Agreement Issues - From Steve Samuels

Yes, and in the Settlement Agreement, we need to be clear that the items
 in Exhibit B are part of it. If you want we can split it up into two
 sentences, the first from the CTA and the second to confirm that Exhibit
 B is part of it. Otherwise, the Settlement Agreements wouldn't be true
 settlements, ie. Agreements on how to proceed.

-----Original Message-----

From: KWinters@ssd.com [mailto:KWinters@ssd.com]
 Sent: Wednesday, June 14, 2006 4:06 PM
 To: Feldman, Elise (ENRD); Tenenbaum, Alan (ENRD); vpowers@szd.com;
 garypie.catherine@epamail.epa.gov; ssamuels@szd.com;
 ebessey@kdhe.state.ks.us; monroeb@michigan.gov; PierceJC@michigan.gov;
 Betsey.Streuli@deq.state.ok.us; PBrooks@ssd.com; JMorgan@atg.state.il.us
 Cc: Cintron-Silva.Maria@epamail.epa.gov; LPutman@milbank.com;
 TKreller@milbank.com; wvawest@ameritech.net; CGIBBONS@szd.com;
 SLerner@ssd.com
 Subject: RE: CTA and Settlement Agreement Issues - From Steve Samuels

Alan-the definition of "Environmental Action" set forth below that Steve
 has suggested we include in the Oklahoma Settlement Agreement is
 identical to the definition of "Environmental Action" in the current
 iteration of the Custodial Trust Agreement.

-----Original Message-----

From: Alan.Tenenbaum@usdoj.gov [mailto:Alan.Tenenbaum@usdoj.gov]
 Sent: Wednesday, June 14, 2006 3:54 PM
 To: vpowers@szd.com; Elise.Feldman@usdoj.gov;
 garypie.catherine@epamail.epa.gov; ssamuels@szd.com;

ebessey@kdhe.state.ks.us; monroeb@michigan.gov; PierceJC@michigan.gov;
Betsey.Streuli@deq.state.ok.us; Brooks, Patrick J.; Winters, Karen;
JMorgan@atg.state.il.us
Cc: Cintron-Silva.Maria@epamail.epa.gov; LPutman@milbank.com;
TKreller@milbank.com; wvawest@ameritech.net; CGIBBONS@szd.com; Lerner,
Stephen D.
Subject: RE: CTA and Settlement Agreement Issues - From Steve Samuels

We agree that the CT can get insurance relating to any liability it or the CTP may have relating to the lease. As we also discussed, the CT cannot use its funding to buy insurance for Newco.

We believe that with the change to 4(b) to protect you in the event you have no funds, you don't need and shouldn't change the definition of Environmental Action. It should go back to the way it was. We need to clearly state that what's in Exhibit B is part of the definition. Best we can tell, 4(b) accomplishes what you need, but if we are missing something let us know.

-----Original Message-----

From: vpowers@szd.com [mailto:vpowers@szd.com]
Sent: Wednesday, June 14, 2006 2:09 PM
To: Tenenbaum, Alan (ENRD); ssamuels@szd.com; Feldman, Elise (ENRD); garypie.catherine@epamail.epa.gov; PierceJC@michigan.gov; monroeb@michigan.gov; Betsey.Streuli@deq.state.ok.us; ebessey@kdhe.state.ks.us; JMorgan@atg.state.il.us; KWinters@ssd.com; PBrooks@ssd.com
Cc: Cintron-Silva.Maria@epamail.epa.gov; TKreller@milbank.com; LPutman@milbank.com; SLerner@ssd.com; CGIBBONS@szd.com; wvawest@ameritech.net; vpowers@szd.com
Subject: CTA and Settlement Agreement Issues - From Steve Samuels

Victoria and I received a telephone call this morning from Alan and Elise during which we discussed certain concerns that they have with the CTA and the Oklahoma Settlement Agreement. As a result of that call, we have cobbled together new language for consideration by the other parties. New language is italicized and underlined; deleted language is also bracketed.

--In Sec. 2.1(e) of the CTA (circa p.10-11): "....Plan, the Confirmation Order, and any related documents [including, without limitation, any leases] in such amounts and on such terms as the Custodial Trustee may, in his discretion, determine for (i) personal injury, property damage and wrongful death and....." As we understand USEPA/DOJ's position, although they strongly desire to delete the explicit reference to leases in the CTA, they acknowledge that "related documents" incorporates the leases by reference. With that understanding, which we need all the other parties to acknowledge (via email), we can accept the requested change.

--In Sec. 5.3(a) of the CTA (circa p. 36): "...any dispute between the Custodial Trustee and an Environmental Agency regarding the modification, disapproval, or other action of the Environmental Agency regarding any submittal or request for approval by the Custodial Trustee related to the scope or means of implementing the Environmental Actions shall be resolved in accordance with the existing state or federal-depending on which is the Lead Agency-administrative or judicial [appellate review] procedures for challenging such actions, if available.

--In the defn of "Environmental Action" in the Settlement Agreement, USEPA proposes (and the CT concurs) that we import the existing definition from the CTA (i.e., before the CT's suggested change to the term this morning), to wit:

"Environmental Actions" shall mean investigation, remediation, response, closure and post-closure actions to the extent required by applicable law, including bankruptcy law and Environmental Law and those actions agreed to be performed under the Settlement Agreements; and, if and to the extent that funds are available in a Custodial Trust Account, such other response actions as the Custodial Trustee, after consultation with the Lead Agency, determines would facilitate the sale, transfer or other disposition of the Properties.

--The Trustee proposes the addition of a new paragraph 4(b) to the Oklahoma Settlement Agreement that would make clear that (1) his obligation to do work is limited by the funds available and, (2) that funds must be assured for the performance of required Environmental Actions before they may be expended for items that would facilitate sale/lease of the property. Specifically:

(b) Site Specific Environmental Actions and other actions. The Custodial Trustee shall perform the Environmental Actions and other actions prescribed by this paragraph to the extent (a) funds are available in the applicable Custodial Trust Account and, (b) Environmental Actions are required by applicable law, including bankruptcy law and Environmental Law, including those Actions set forth in Exhibit B hereto and such other Actions as may be agreed upon by the Custodial Trustee and the ODEQ from time to time hereafter and, (c) funds are or will be available in the applicable Custodial Trust Account following the performance of the Environmental Actions prescribed by "(b)" above, such other actions as the Custodial Trustee, after consultation with the Lead Agency, determines would facilitate the sale, transfer or other disposition of the Oklahoma Property.

Alan also suggested the use of language from the model RD/RA consent decree to address the "conflict" between the governmental parties interest in being able to promptly address environmental problems if the Trustee doesn't act expeditiously and adequately and the Trustee's concern that the CTA doesn't give the government carte blanche to take implement any remedy they may want at any time. Because I am short of time, I asked Karen Winters to take the first stab at that.

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